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Human rights situations that require the Council's attention

Written statement* submitted by the Jammu and Kashmir Council for Human Rights (JKCHR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 August 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Indian Administered Jammu and Kashmir - Protection of State Subject Law

Out of the six principal works entrusted to Human Rights Council, the last three in the list, namely to “check what governments do to protect the rights of people in their countries”, “check if governments do what they agreed on at the United Nations” and “help people whose rights were taken away” merit an immediate appraisal in relation to the people of the State of Jammu and Kashmir. The people are waiting for a UN supervised referendum since 13 August 1948. JKCHR has continued to update the predecessor bodies, Human Rights Commission and Sub Commission since 6 July 1990 on the Human Rights situation in Indian administered part of Jammu and Kashmir.

Indian Government framed an excuse that it was sending its military into Jammu and Kashmir, to defend the ‘territory’, protect ‘life’, ‘property’ and ‘honour’ of the people. The Muslim majority of the State, Valley of Kashmir in particular looked at the arrival of these Indian forces, with suspicion.

On 27th October 1947 State had shaped itself into three administrations, two of them after the UN brokered cease fire line fell on the Pakistani side of cease fire line. These two administrations on the Pakistani side of cease fire line known as Azad Kashmir and Gilgit and Baltistan, function as self-governing administrations. They have entered into a Constitutional arrangement with the Government of Pakistan to provide better Government and administration until such time a referendum is held under UN supervision as provided in UNCIP Resolutions.

In para 7 of the telegram of 31 October 1947 addressed to Prime Minister of Pakistan referenced in UN debates on Kashmir, Prime Minister of India stated “Our assurance that we shall withdraw our troops from Kashmir as soon as peace and order are restored and leave the decision regarding the future of this State to the people of the State is not merely a pledge to your Government but also to the people of Kashmir and to the world.”

At the 227th meeting of the UN Security Council Indian representative concluded his submissions stating, “The question of the future status of Kashmir vis-à-vis her neighbours and the world at large and a further question, namely, whether she should withdraw from her accession to India, and either accede to Pakistan or remain independent, with a right to claim admission as a Member of the United Nations – all this we have recognised to be a matter for unfettered decision by the people of Kashmir, after normal life is restored to them.”

Normal life was restored, through a UN brokered peace between all sides including India and Pakistan on 01 January 1949. As a consequence there are two autonomous administrations of Jammu and Kashmir on the Pakistani side of the cease fire line. India does not have any exclusive role to ‘defend’ the territory of Jammu and Kashmir any more since 01 January 1949. People in Azad Kashmir and Gilgit and Baltistan administer their own affairs and live in peace.

Indian Government has reneged on its promises made to the people of Kashmir, Government of Pakistan and the United Nations. Indian army has forced five generations of Kashmiri Muslims out of their homes to go to live in Pakistan. Indian Government has continued to deny these people the right of their lawful entry and exit as guaranteed in the UN Resolution of 21 April 1948. Ever since 1990 Indian army has sought protection under AFSPA (Armed Forces Special Powers Act) and PSA laws (Public Safety Act), two draconian laws, which keep them out of the reach of any accountability and criminal liability. Army is engaged in a war with the civilian Muslim population and in the last 25 years has killed over 100,000 civilians and continues to kill on a daily basis. The last killing was done on Sunday 13 August 2017, when three Kashmiri youth namely, Muhammed Yasin Itoo, Adil Malik and Irfan ul Sheikh were killed in Shopian, South Kashmir.

Indian army has profiled the Kashmiri youth. The resistance to Indian rule is classified into category A++, A+, A, B and C. Rewards are given according to the category of the youth killed. The offer of a reward has encouraged a culture of greed and competition in the army and their recruited mercenaries to kill innocent people and share the blood money.

Under a continued shadow of curfew and suspended internet and telephone facilities youth are rounded up, kept in custody and killed.

Government of India has a policy to change the demography of the State. It is encouraged by Quebec referendum where the 'yes' vote failed by a deficit of 54, 288 votes. In addition to the use of its military to create a number deficit, Government of India has started using the judiciary (Supreme Court) to disturb the State Subject Law and open up the part of the State under its control to the entry and settlement of non-Kashmiri (non State), Indian citizens into the State.

Earlier the Indian citizens were required an Entry Permit to enter the State of Jammu and Kashmir until 30 March 1959. Unlike a citizen of India or Pakistan a native of the State of Jammu and Kashmir is called a State Subject under State Subject Notification No. 1-L/84 dated the twentieth April 1927, read with State Subject Notification No. 13/L dated the twenty-seventh June 1932.

The Azad Jammu and Kashmir Interim Constitution Act 1974, has incorporated the provision of "State Subjects" as a "person for the time being residing in the Azad Jammu and Kashmir or Pakistan who is a "State Subject" as defined in the late Government of the State of Jammu and Kashmir Notification No. 1-L/84 dated the 20th April 1927, as amended from time to time."

The Constitutional history in Jammu and Kashmir started on 07 September 1939. It is older than that of India and Pakistan. In 1950, the Constitution of India came into force. Article 370 of the same covered the case of Kashmir. Part II of the Constitution of India dealing with Citizenship was not made applicable to Jammu and Kashmir State. The Union Parliament had no power to make laws for the State on Citizenship. Thus, the people of Jammu and Kashmir State were 'protected subjects' in the rest of India and not 'Indian citizens' even after India became a Republic in 1950.

"In 1952, when the Delhi Agreement was reached between the representatives of the Kashmir Government (elected from only a part of the State as referenced in UN Resolution of 30 March 1951) and the Government of India, it was agreed that, though the rights of the permanent residents of Kashmir had to be protected, there was no reason why the people of the State should be denied Indian Citizenship." The Indian Government has accepted that the State Legislature could be given powers to define and regulate the rights and privileges of the permanent residents of the State, more especially in regard to acquisition of immovable property, appointments to service in the State and like matters.

In February 1948 Indian Government with the assistance of Sheikh Abdullah pleaded a 'sovereign status' for the Government of Jammu and Kashmir at the UN. The sovereignty plea made has been granted by the United Nations. It was in exercise of this residual sovereignty of the State that Indian citizens required an entry permit for entry and exit into the State of Jammu and Kashmir.

On 30 March 1959 the State Government abolished Jammu and Kashmir Government Order No.171 of 1957 dated 18th October 1957 and issued Jammu and Kashmir Government Notification No IS-4 of 1959 dated 30 March 1959. It abolished the Permit restriction and allowed freedom of travel for Indian citizens, from 01 April 1959. This relaxation did not provide them any protection as State Subjects. Prime Minister elected from only a part of the State had no executive authority to abolish the permit restrictions.

Government of India has now encouraged RSS-backed think-tank 'Jammu Kashmir Study Centre' to seek the abrogation of article 35-A from the Supreme Court. On 09 September 1959 Government of Pakistan has raised the question of extension of the jurisdiction of the Supreme Court of India to the disputed State. Indian Government wants to disturb the State Subject Law in the disputed State and make room for the settlement of non-Kashmiris in the State, to influence the UN supervised referendum in the State.

These incursions into the State have been facilitated by National Conference Resolution of 1950 and by the adoption of The Constitution of Jammu and Kashmir on 17 November 1956. Human Rights Council shall have to consider the aggregate impact of these violations of UN Security Council resolutions on the rights of people. The situation has highlighted the scope of International Court of Justice, to adjudicate upon matters arising out of failure in implementing

the UN Resolutions or on other acts that have hurt the right of self-determination and disturbed the restraint of India and Pakistan.
